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U.S. DISTRICT COURT
DISTRICT OF NEVADA

Timothy P. Harris, Pro Se'
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

Timothy P. Harris, Pro Se'
Plaintiff

Case No: 2:10-cv-01662-GMN-LRL

V.

**Civil Rights Violation Complaint
Trial By Jury Demanded**

AMERICAN GENERAL FINANCIAL
SERVICES, LLC
Defendant

MOTION IN OPPOSITION TO MOTION TO DISMISS

Comes now the Plaintiff Timothy Harris, and hereby submits his opposition to the Defendant American General Motion to Dismiss incorrectly identified in the Plaintiffs' complaint as AMERICAN GENERAL FINANCIAL SERVICES, LLC, and is now correctly identified as AMERICAN GENERAL FINANCIAL SERVICES OF AMERICA, INC, from here forward using their letters AGFSOA.

The Plaintiff brings this action against the Defendant as a result of Defendant's American General violations of the Fair Credit Reporting Act (FCRA) 15 U.S.C. § 1681 and the Telephone Consumers Protection Act (TCPA) 47 U.S.C. § 227 Public Law 102-243.

This case is not about any alleged monies, alleged monies owed, or alleged accounts, or judgments but rather what Defendant American General did or did not do when challenged under the FCRA. These laws are geared directly at the provider of information to credit reporting agencies and their failure to compliance.

26 It is what they are supposed to do when challenged in credit reporting
27 and not about accounts owed or claimed to be owed. Where is the term
28 "money" or debt in the FCRA? There exists, the word "debt collector,"
29 because any consumer, such as this Plaintiff, has the right to challenge the
30 "debt" collector and or providers of information such as the Defendant if
31 they are using the consumers credit report.

32 Defendant claims there is no private right of action under 15 U.S.C. §
33 1681s-2(a), which governs the duty of furnishers. The Plaintiff will clarify
34 the law from the FCRA.

35 § 602. Congressional findings and statement of purpose [15 U.S.C. §
36 1681]

37 (a) Accuracy and fairness of credit reporting. The Congress makes
38 the following findings:

39 (1) The banking system is dependent upon fair and accurate credit
40 reporting. Inaccurate credit reports directly impair the efficiency of the
41 banking system, and unfair credit reporting methods undermine the public
42 confidence which is essential to the continued functioning of the banking
43 system.

44 § 603. Definitions; rules of construction [15 U.S.C. § 1681a]

45 (a) Definitions and rules of construction set forth in this section are
46 applicable for the purposes of this title.

47 (b) The term "person" means any individual, partnership, corporation,
48 trust, estate, cooperative, association, government or governmental
49 subdivision or agency, or other entity.

50 (c) The term "consumer" means an individual.

51
52 617. Civil liability for negligent noncompliance [15 U.S.C. § 1681]

53 (a) In general. Any person who is negligent in failing to comply with
54 any requirement imposed under this title with respect to any consumer is
55 liable to that consumer in an amount equal to the sum of

56 (1) any actual damages sustained by the consumer as a result of the
57 failure; and

58 (2) in the case of any successful action to enforce any liability under
59 this section, the costs of the action together with reasonable attorney's fees
60 as determined by the court.

61 (b) Attorney's fees. On a finding by the court that an unsuccessful
62 pleading, motion, or other paper filed in connection with an action under
63 this section was filed in bad faith or for purposes of harassment, the court
64 shall award to the prevailing party attorney's fees reasonable in relation to
65 the work expended in responding to the pleading, motion, or other paper.

66 § 623. Responsibilities of furnishers of information to consumer
67 reporting agencies

68 [15 U.S.C. § 1681s-2]

69 (a) Duty of Furnishers of Information to Provide Accurate Information

70 (1) Prohibition

71 (A) Reporting information with actual knowledge of errors. A person
72 shall not furnish any information relating to a consumer to any consumer
73 reporting agency if the person knows or has reasonable cause to believe
74 that the information is inaccurate.

75 (B) Reporting information after notice and confirmation of errors. A
76 person shall not furnish information relating to a consumer to any consumer
77 reporting agency if

78 (i) the person has been notified by the consumer, at the address
79 specified by the person for such notices, that specific information is
80 inaccurate; and

81 (ii) the information is, in fact, inaccurate.

82 (C) No address requirement. A person who clearly and conspicuously
83 specifies to the consumer an address for notices referred to in
84 subparagraph (B) shall not be subject to subparagraph (A); however,
85 nothing in subparagraph (B) shall require a person to specify such an
86 address.

87 (D) Definition. For purposes of subparagraph (A), the term
88 "reasonable cause to believe that the information is inaccurate" means
89 having specific knowledge, other than solely allegations by the consumer,
90 that would cause a reasonable person to have substantial doubts about the
91 accuracy of the information.

92 (2) Duty to correct and update information. A person who

93 (A) regularly and in the ordinary course of business furnishes
94 information to one or more consumer reporting agencies about the person's
95 transactions or experiences with any consumer; and

96 (B) has furnished to a consumer reporting agency information that the
97 person determines is not complete or accurate, shall promptly notify the
98 consumer reporting agency of that determination and provide to the agency
99 any corrections to that information, or any additional information, that is
100 necessary to make the information provided by the person to the agency
101 complete and accurate, and shall not thereafter furnish to the agency any
102 of the information that remains not complete or accurate.

103 (3) Duty to provide notice of dispute. If the completeness or accuracy
104 of any information furnished by any person to any consumer reporting

105 agency is disputed to such person by a consumer, the person may not
106 furnish the information to any consumer reporting agency without notice
107 that such information is disputed by the consumer.

108 Case Law to Support private right of action under 15 U.S.C. § 1681s-
109 2(a), *Dornhecker v. Ameritech Corp.*, 99 F. Supp. 2d 918 (N.D. Ill. 2000).

110 A U.S. district court held that the Fair Credit Reporting Act (FCRA),
111 15 U.S.C. 1681 et seq., permits consumers to bring private causes of
112 action against furnishers of information to credit reporting agencies who fail
113 to properly investigate disputed credit information.

114 Here, a telephone services provider opened phone service accounts
115 on behalf of third persons who fraudulently used the names of other
116 individuals. The provider subsequently enlisted the services of collection
117 agencies to satisfy the debts on the accounts. After being made aware of
118 the debts, the individuals whose names had been used notified the credit
119 reporting agencies of the fraud. After the individuals, collection agencies,
120 and credit reporting agencies notified the provider of the dispute, the
121 provider reportedly failed to investigate. The individuals sued the provider,
122 alleging, among other claims, that Defendant violated 1681s-2(b)(1) of the
123 FCRA by failing to properly investigate the disputed credit information.

124 Defendant moved to dismiss, arguing that plaintiffs lacked standing
125 because the FCRA does not create a private right of action for consumers.

126 Denying the motion, the court agreed with the U.S. Supreme Court's
127 analysis-set forth in *Cort v. Ash*, 95 S. Ct. 2080 (1975) for determining
128 whether an implied private right of action exists under a statute. The four
129 factors are: whether (1) the plaintiff is a member of a class for whose
130 benefit the statute was enacted; (2) the legislative history indicates
131 congressional intent, explicit or implicit, either to create or deny such a

remedy; (3) implying a private remedy would frustrate the underlying purposes of the legislative scheme; and (4) the cause of action is one traditionally relegated to state law.

May it please the Court: the Plaintiff has disputed with the Defendant American General and the Credit Reporting Agencies in the same time period and has attached proof to this Motion of these mailings via certified mail to both the Defendant and the credit bureaus. The question is that during the investigation did the Defendant "talk" to the Bureaus and vice versa how does anyone know without proof? If the Defendant claims we did an investigation this is hearsay no proof other than their statement. Why did the Defendant not provide this alleged investigation information to the Plaintiff after they had done their alleged investigation? Most likely if they had it may have prevented this suit.

**FCRA PROVIDES PRIVATE CAUSE OF ACTION AGAINST
FURNISHER OF INFORMATION**

Gordon v. Greenpoint Credit, 266 F.Supp.2d 1007 (S.D.Iowa 2003)
and.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD L. SHEFFER, :

Plaintiff, : CIVIL ACTION: v.

EXPERIAN INFORMATION :

SOLUTIONS, INC., et al., : No. 02-7407

Defendants. :

MEMORANDUM AND ORDER

SCHILLER, J. February , 2003

159 In its motion, Sears contends that Plaintiff's claim under the FCRA
160 should be dismissed because consumers have no private right of action
161 against a credit furnisher under 15 U.S.C. § 1681s-2(b). In the alternative,
162 Sears argues that Mr. Sheffer's allegations are legally insufficient because
163 Plaintiff has failed to allege that a credit reporting agency has sent a
164 dispute verification form to Sears. Sears also moves for the dismissal of Mr.
165 Sheffer's defamation claim, arguing that the claim is preempted by the
166 FCRA.

167 With respect to the issue of whether § 1681s-2(b) creates a cause of
168 action for a consumer against a furnisher of credit information, Sears
169 correctly notes that courts have reached different conclusions. However, a
170 clear majority of courts that have addressed this issue has 'effectively
171 recognized Congress' obvious intent [to] create a private cause of action
172 through § 1681s-2."

173 *Vazquez-Garcia v. Trans Union De P.R., Inc.*, 222 F. Supp. 2d 150,
174 155 (D.P.R. 2002); see also

175 *Nelson v. Chase Manhattan Mortg. Corp.*, 282 F.3d 1057, 1058 (9th
176 Cir. 2002) (describing purpose of § 1681s-2(b) as "provid[ing] some private
177 remedy to injured consumers"). The reasoning in support of the majority
178 view has been aptly summarized:

179 The civil liability sections, 15 U.S.C. § 1681n and 1681o, explicitly
180 provide a private right of action for consumers wishing to enforce any
181 provision of the Fair Credit Reporting Act against "any person" who either
182 "willfully fails to comply" or is "negligent in failing to comply." Absent any
183 explicit limitation, the plain language of 15 U.S.C. §§ 1681n, 1681o, 1681s-
184 2(b) and (c) provide a private right of action for a consumer against
185 furnishers of information who have willfully or negligently failed to perform

186 their duties upon notice of a dispute. Furthermore, the negative inference of
187 explicitly precluding a consumer's right of action for violations of § 1681s-
188 2(a) is that they are preserved in § 1681s-2(b). Accordingly, the plain
189 language of the Fair Credit Reporting Act compels the conclusion that there
190 is a private right of action for consumers to enforce the investigation and
191 reporting duties imposed on furnishers of information.

192 Defendant American General states that the Plaintiff Fails to State a
193 Claim upon which relief can be granted:

194 In considering a motion to dismiss for failure to state a claim upon
195 which relief can be granted, courts must accept as true all of the factual
196 allegations pleaded in the complaint and draw all reasonable inferences in
197 favor of the non-moving party. See Bd. of Trs. of Bricklayers & Allied
198 Craftsmen Local 6 of N.J. Welfare Fund v. Wettlin Assocs., Inc., 237 F.3d
199 270, 272 (3d Cir. 2001).

200 Furthermore, a motion to dismiss will only be granted if it is clear that
201 relief cannot be granted to the Plaintiff under any set of facts that could be
202 proven consistent with the complaint's allegations.

203 See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (citing Conley
204 v. Gibson, 355 U.S. 41, 45-46 (1957); Erickson, 127 S.Ct. at 2200.

205 In Erickson.....

206 In Erickson, the Supreme Court stressed the pro se status of the
207 plaintiff in Erickson — a far cry from the highly sophisticated antitrust
208 counsel in Bell Atlantic: The Court of Appeals' departure from the liberal
209 pleading standards set forth by Rule 8(a)(2) is even more pronounced in
210 this particular case because petitioner has been proceeding, from the
211 litigation's outset, without counsel. A document filed pro se is "to be
212 liberally construed," Estelle [v. Gamble], 429 U.S. [97] at 106, 97 S.Ct. 285,

and “allegations such as those asserted by petitioner, however in artfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers” HAINES V. KERNER, 404 U. S. 519 (1972), and “a pro se complaint, however in artfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers,” *ibid.* (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) (“.... All pleadings shall be so construed as to do substantial justice”).

And Federal Rule of Civil Procedure 8(a)(2) requires only “ a short and plain statement of the claim showing that the pleader is entitled to relief.” Specific facts are not necessary; the statement need only “give the Defendant fair notice of what the ...claim is and the grounds upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. ----, ----, 127 S.Ct. 1955, --- L.Ed.2d ----, ---- - ---- (2007) (slip op., at 7- 8) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)).

In addition, when ruling on a Defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint. *Bell Atlantic Corp.*, *supra*, at 1955, 127 S.Ct. 1955 (slip op., at 8-9) (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508, n. 1, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002);

Neitzke v. Williams, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989);

Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974)).

Erickson, 127 S.Ct. at 2200.

Summation:

240 The Plaintiff has disputed with the Furnisher/Defendant and the
241 Credit Bureaus in the same time frame certified mailings attached.

242 The OCC, Federal Reserve Board, FDIC, OTS, NCUA, and the FTC
243 (Agencies) issued a joint final rule (Final Rule) under Section 312 of the
244 Fair and Accurate Credit Transactions Act of 2003 (FACT Act), which
245 amends the Fair Credit Reporting Act (FCRA). Section 623 of the FCRA
246 describes the responsibilities of persons that furnish information about
247 consumers (furnishers) to credit reporting agencies (CRAs). The Final Rule
248 addresses the accuracy and integrity of reported information and
249 furnishers' responsibility to reinvestigate disputes based on direct disputes
250 from consumers. Furnishers are also required to establish policies and
251 procedures to implement the requirements.

252 **The Final Rule will become effective on July 1, 2010.**

254 Policies and Procedures

255 The Final Rule requires furnishers to establish and implement
256 reasonable written policies and procedures regarding the accuracy and
257 integrity of information about consumers furnished to a CRA. The policies
258 and procedures must be appropriate to the nature, size, complexity, and
259 scope of the furnisher's activities.

260 Furnishers must consider the accuracy and integrity guidelines (in the
261 Appendix of each Agency's regulation) in developing policies and
262 procedures. Furnishers must also review them periodically and update
263 them as necessary, but an audit requirement is not imposed. Not all of the
264 guidelines must be implemented.

265 According to the guidelines, furnishers' policies and procedures
266 should identify areas that compromise the accuracy or integrity of reported

information, evaluate the effectiveness of existing policies and procedures, consider the need for changes, and evaluate the effectiveness of how information is provided to CRAs, making changes as necessary.

The elements of a furnisher's policies and procedures should include how consumer information is reported, maintaining records [1], maintaining internal controls, training, oversight, furnishing consumer information in connection with mergers and other transactions, data integrity, dispute resolution, controls related to consumer reports furnished to CRAs, conducting periodic evaluations of procedures, and complying with applicable laws and regulations.

Key Definitions

Accuracy. The term "accuracy" is defined as information that a furnisher provides to a CRA about an account or other relationship with the consumer that correctly:

- reflects the terms of and liability for the account or other relationship;
- reflects the consumer's performance and other conduct with respect to the account or other relationship; and
- identifies the appropriate consumer.

The term "without error" was proposed but not included in the Final Rule because it would imply such high standards that the Agencies feared it might lead some persons to limit furnishing information to CRAs. The adopted "correctly reflects" standard is intended to achieve a high degree of accuracy without creating litigation risks.

Integrity. Information furnished to a CRA may be technically accurate yet lack "integrity" because it presents a misleading picture of the

consumer's creditworthiness if critical information is omitted. The term "integrity" is defined as information that a furnisher provides to a CRA about an account or other relationship with the consumer that:

- is substantiated by the furnisher's records at the time it is furnished;
- is furnished in a form and manner that is designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report; and
- includes the information in the furnisher's possession about the account or other relationship that the relevant Agency has:
 - determined that the absence of which would likely be materially misleading in evaluating a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and
 - listed in section I.(b)(2)(iii) of the guidelines. (This section provides one item on this list: the credit limit, if applicable and in the furnisher's possession) [2].

Each Agency will determine, and list in its guidelines, the types of information in a furnisher's possession that must be provided to promote the integrity of the information. This list will be based on the Agency's determination that the absence of the information would likely be materially misleading. In the preamble to the Final Rule, the Agencies note that, as furnishing information under the FCRA is voluntary, the definition of integrity applies only to information that the furnisher elects to provide to a CRA. The phrase "standardized and clearly understandable form" was proposed but not included in the Final Rule, but this notion is included in the guidelines.

321 Furnisher. The term “furnisher” means an entity that furnishes
322 information relating to consumers to one or more CRAs for inclusion in a
323 consumer report. An entity is not a furnisher when it:

- 324 • provides information to a CRA solely to obtain a consumer
325 report;
- 326 • is acting as a CRA (e.g., resellers);
- 327 • is a consumer to whom the furnished information pertains (i.e.,
328 through self-reporting); or
- 329 • is a neighbor, friend, or associate of the consumer, or another
330 individual with whom the consumer is acquainted or who may have
331 knowledge about the consumer, and who provides information about the
332 consumer’s character, general reputation, personal characteristics, or
333 mode of living in response to a specific request from a CRA.

334 The last exception parallels the types of information that are collected
335 in connection with an investigative consumer report, and is deemed
336 necessary to avoid disrupting those activities.

337 338 **Direct Dispute/Investigation**

339 A furnisher is now required to conduct a reasonable investigation if a
340 consumer directly disputes certain information contained in a consumer
341 report. “Direct dispute” means a dispute submitted directly to a furnisher
342 (including a furnisher that is a debt collector) by a consumer concerning the
343 accuracy of any information contained in a consumer report and pertaining
344 to an account or other relationship that the furnisher has or had with the
345 consumer. A furnisher is required to conduct a reasonable investigation if
346 the dispute relates to:

347 • the consumer's liability for a credit account or other debt with
348 the furnisher, such as direct disputes relating to whether there is or has
349 been identity theft or fraud against the consumer, whether there is
350 individual or joint liability on an account, or whether the consumer is an
351 authorized user of a credit account;

352 • the terms of a credit account or other debt with the furnisher,
353 such as direct disputes relating to the type of account, principal balance,
354 scheduled payment amount on an account, or the amount of the credit limit
355 on an open-end account;

356 • the consumer's performance or other conduct concerning an
357 account or other relationship with the furnisher, such as direct disputes
358 relating to the current payment status, high balance, date a payment was
359 made, the amount of a payment made, or the date an account was opened
360 or closed; or

361 • any other information contained in a consumer report regarding
362 an account or other relationship with the furnisher that bears on the
363 consumer's creditworthiness, credit standing, credit capacity, character,
364 general reputation, personal characteristics, or mode of living.

365 These provisions do not apply to a furnisher if the direct dispute
366 relates to:

367 • the consumer's identifying information (other than a direct
368 dispute relating to a consumer's liability for a credit account or other debt
369 with the furnisher) such as name, date of birth, SSN, telephone number, or
370 address;

371 • the identity of past or present employers;

372 • inquiries or requests for a consumer report;

373 • information derived from public records, such as judgments,
374 bankruptcies, liens, and other legal matters (unless provided by a furnisher
375 with an account or other relationship with the consumer);

376 • information related to fraud alerts or active duty alerts; or
377 • information provided to a consumer reporting agency by
378 another furnisher; or

379 • the furnisher has a reasonable belief that the direct dispute is
380 submitted by, is prepared on behalf of the consumer by, or is submitted on
381 a form supplied to the consumer by, a credit repair organization [3].

382 Under any of these circumstances, the furnisher is not required to
383 investigate the dispute (and these circumstances render the dispute
384 "frivolous or irrelevant" as discussed below).

385 The consumer is required to submit a dispute notice to the furnisher:
386 (i) at the furnisher's address indicated by the furnisher on the consumer
387 report; (ii) at a location clearly and conspicuously specified by the furnisher
388 for submitting direct disputes provided in writing or electronically (if the
389 consumer has agreed to the electronic delivery of information from the
390 furnisher); or (if not provided as indicated above) at any business address
391 of the furnisher.

392 The dispute notice must include sufficient information to identify the
393 account or other relationship, the specific information in dispute together
394 with an explanation, and all supporting documentation or other information
395 reasonably required to substantiate the dispute. This may include a copy of
396 the disputed portion of the consumer report, a police report, affidavit, court
397 order; or account statements.

398 After receiving the notice, the furnisher must conduct a reasonable
399 investigation and review the relevant information provided. The

400 investigation must be completed and reported to the consumer within the
401 same period that a CRA is subject to under its reinvestigation duty (30 days
402 with a possible extra 15 days) [4]. If the investigation results in a finding
403 that the information reported was inaccurate, the furnisher must promptly
404 notify each CRA to which the furnisher provided the information and
405 provide any correction necessary to make the information accurate.

406 A furnisher is not required to investigate a direct dispute if the
407 furnisher has reasonably determined that the dispute is "frivolous or
408 irrelevant." This exception applies if the consumer did not provide sufficient
409 information to investigate the disputed information, or the furnisher had
410 previously handled the same dispute properly. (A direct dispute is not
411 substantially the same if it includes new information not included in the
412 earlier dispute). These examples are not intended to be exhaustive.

413
414 The furnisher must notify the consumer within five business days
415 after making a determination that a dispute is frivolous or irrelevant by mail
416 or (if authorized by the consumer for that purpose) by any other means
417 available to the furnisher. The notice must include the reasons for the
418 determination and identify any information required to investigate the
419 disputed information. It is allowable that the notice consist of a
420 standardized form describing the general nature of such information. The
421 Agencies note that the FTC, when it next updates its General Summary of
422 Consumer Rights, will include consumers' direct dispute rights in the
423 summary.

Guidelines

Each of the Agencies provides an Appendix to its respective Final Rule entitled, "Interagency Guidelines Concerning The Accuracy And Integrity Of Information Furnished To Consumer Reporting Agencies." The guidelines include more detailed procedures and guidance on all aspects of the obligations in the Final Rule. In the preamble to the Final Rule, the Agencies disclaim a "one-size-fits-all" approach requiring all furnishers to implement all of the guidelines. As discussed, a furnisher's policies and procedures should be appropriate to the nature, size, complexity, and scope of its activities.

1. No specific retention period is prescribed in the Final Rule or guidelines. Records must be kept for "a reasonable period of time, not less than any applicable recordkeeping requirement, in order to substantiate the accuracy of any information about consumers it furnishes that is subject to a direct dispute. Guidelines Section III.c.

2. The Agencies consider that a key factor for evaluating creditworthiness is credit utilization. Omission of a credit limit for an account results in credit evaluators either ignoring credit utilization or using a substitute measure for the credit limit, such as the highest balance, which may result in a higher estimate of credit utilization.

3. The term is defined in 15 U.S.C. 1679a(3) as "any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of—(i) improving any consumer's credit record, credit history, or credit rating; or (ii) providing advice or assistance to any consumer with regard to any activity or service

described in clause (i).” For purposes of the Final Rule, the term also includes 501c-3 organizations that are credit repair organizations.

4. The actual period is the limit set forth in 15 U.S.C. 1681i(a)(1) applicable to a consumer reporting agency’s reinvestigation duty—that is, 30 days with a limited 15-day extension.

**Answer to Defendants Motions under TCPA against the Plaintiff
state as follows:**

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Specific facts are not necessary; the statement need only “give the Defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. ----, ----, 127 S.Ct. 1955, --- L.Ed.2d ----, ---- (2007) (slip op., at 7- 8) (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)).

In addition, when ruling on a Defendant’s motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint. *Bell Atlantic Corp.*, *supra*, at 1955, 127 S.Ct. 1955 (slip op., at 8-9) (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508, n. 1, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002);

Neitzke v. Williams, 490 U.S. 319, 327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989);

Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974)).

Erickson, 127 S.Ct. at 2200.

The Defendant has stated that calls made to Plaintiff were permissible calls (23 calls in less than one month) and if they were made to

481 the Plaintiffs Cell Phone. The Plaintiff did not expand on this claim (under
482 227b and 227d) as the above rule is quite clear only "a short and plain
483 statement of the claim showing that the pleader is entitled to relief."

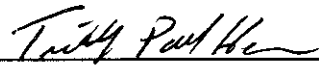
484 Of course this can all be determined once this action is moved to 26f
485 to determine if the callers are robo/automated calls or if they were actually
486 made by "humans" who actually exist and if the Defendant has/had
487 permission to call the Plaintiffs number. So far we only have hearsay on
488 this issue based on the Defendants statements in their Motion to Dismiss.
489 No facts have been brought forth regarding any type of
490 business/contractual relationship existing to allow unsolicited phone calls
491 from the Defendant.

492 However the Plaintiff believes these issues fall under section 227b
493 and or 227d of the TCPA. Also words such as Harassment, Intimidation
494 and Dunning do fit into this picture based on the Defendants actions and
495 the Plaintiff believes that a jury who would see or be made aware of these
496 actions of the Defendant may very well agree with the Plaintiffs claims.

497 498 **Conclusion**


499 WHEREFORE, in consideration of all reasons outlined in
500 Plaintiff's Motion in Opposition to Defendants American General Motion to
501 Dismiss, Plaintiff respectfully moves this Honorable Court to deny
502 Defendants Motion to Dismiss and set these proceedings to Rule 16 and or
503 26f.

504
505
506
507 Respectfully submitted this 26th day of October, 2010.


Timothy P. Harris
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702-371-3658
extremeps1@cox.net

CERTIFICATE OF SERVICE

I, the Plaintiff, Timothy Harris does hereby certify that a copy of the Opposition to Dismiss was sent to the Defendant American General Financial Services Of America, Inc. through their attorney of record Fennemore Craig, P.C., David W. Dachelet, Esq., Nevada Bar No. 6615, 300 South Fourth Street, Suite 1400, Las Vegas, Nevada 89101 for the purpose of satisfying the requirement for Notice and Service and was sent via E-mail to the attorney and USPS Certified Mail Return Receipt pursuant to Federal Rules of Civil Procedure 4 (c) (2) (c) (i). This will also be available to any and all PACER ECF participants and will serve as Notice and Service.


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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

Timothy P. Harris
Plaintiff, *ProSe*

V.

American General Financial
Services, LLC, Defendant

Case No.: 2:10-cv-01662-GMN-LRL

TRIAL BY JURY DEMANDED

AFFIDAVIT

Comes now the Plaintiff and states as follow:

Attached to the Opposition to Motion to Dismiss are the certified copies of USPS mailings to the Defendant in the above captioned case. These are copies of the true and original documents addressed in the Plaintiffs complaint and show the dates and times of contact with the Defendant and the Plaintiffs' Contact with the credit bureaus.

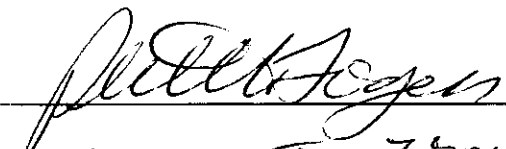
Sworn to under penalty of perjury:

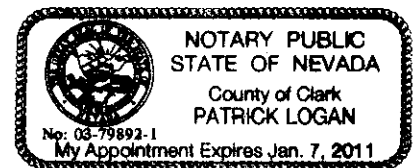
This 26th day of October, 2010



Timothy P. Harris, Plaintiff

Subscribed and sworn before me a Notary Public, of the state of NEVADA, County of Clark, this 26th day of October, 2010, that the above person did appear before me and was identified to be the person executing this document.

Notary Public 
My Commission expires on: Jan 7 2011



CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Affidavit vs. American General Financial Services of America Inc., has been served upon the Defendant American General Financial Services Of America, Inc. through their attorney of record Fennemore Craig,

P.C., David W. Dachelet, Esq., Nevada Bar No. 6615, 300 South Fourth Street, Suite 1400, Las Vegas, Nevada 89101 for the purpose of satisfying the requirement for Notice and Service and was sent via E-mail to the attorney and USPS Certified Mail Return Receipt pursuant to Federal Rules of Civil Procedure 4 (c) (2) (c) (i). This will also be available to any and all PACER ECF participants and will serve as Notice and Service.



Timothy P. Harris, Plaintiff
4005 Cherokee Rose Ave.
North Las Vegas, NV 89031
702-371-3658
extremeps1@cox.net

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
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LOS ANGELES CA 90054

Postage	\$ 00.44	0094
Certified Fee	\$2.80	11
Return Receipt Fee (Endorsement Required)	\$2.30	0102
Restricted Delivery Fee (Endorsement Required)	\$0.00	06/17/2010
Total Postage & Fees	\$ 05.54	

Sent To: *American General Finance*
 Street, Apt. No., or PO Box No.: *P.O. Box 54290*
 City, State, ZIP+4: *Los Angeles, CA 90054-0290*

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

American General Finance
P.O. Box 54290
Los Angeles, CA 90054-0290

2. Article Number

(Transfer from service label)

7009 3410 0001 0346 7841

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*☐ Agent☐ Addressee

B. Received by (Printed Name)

Cesar S. JUN 20 2010

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail ☐ Express Mail☐ Registered ☐ Return Receipt for Merchandise☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes
U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
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For delivery information visit our website at www.usps.com

ALLEN TX 75013

Postage	\$ 00.44	0094
Certified Fee	\$2.80	09
Return Receipt Fee (Endorsement Required)	\$2.30	06/21/2010
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 05.54	

Sent To: *Experian - AG*
 Street, Apt. No., or PO Box No.: *P.O. Box 2002*
 City, State, ZIP+4: *Allen, TX 75013*

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Experian
P.O. Box 2002
Allen, TX 75013

2. Article Number

(Transfer from service label)

7009 3410 0001 0346 8053

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*☐ Agent☐ Addressee

B. Received by (Printed Name)

EXPRIAN PARKWAY

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail ☐ Express Mail☐ Registered ☐ Return Receipt for Merchandise☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7009 3410 0001 0346 8091

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

ATLANTA GA 30374

Postage	\$ 0.44	0094
Certified Fee	\$2.80	09 JUN 21 2010
Return Receipt Fee (Endorsement Required)	\$2.30	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.54	06/21/2010

Sent To: *EquiFax - AG*
 Street, Apt. No. or PO Box No.: *P.O. Box 740241*
 City, State, ZIP+4: *Atlanta GA 30374*

PS Form 3800, August 2005 See Reverse

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

EquiFax
P.O. Box 740241
Atlanta, GA 30374

2. Article Number

(Transfer from service label)

7009 3410 0001 0346 8091

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

JUN 24 2010

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7009 3410 0001 0346 8060

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

CRUM LYNN PA 19022

Postage	\$ 0.44	0094
Certified Fee	\$2.80	09 JUN 21 2010
Return Receipt Fee (Endorsement Required)	\$2.30	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.54	06/21/2010

Sent To: *Trans Union - AG*
 Street, Apt. No. or PO Box No.: *P.O. Box 1000*
 City, State, ZIP+4: *Chester, PA 19022*

PS Form 3800, August 2005 See Reverse

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Trans Union
P.O. Box 1000
Chester, PA 19022

2. Article Number

(Transfer from service label)

7009 3410 0001 0346 8060

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

TransUnion LLC

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No*JUN 24 2010*

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes